

## **JUA Plan of Operation**

**Section 1. Board of Directors.** The Missouri Medical Malpractice Joint Underwriting Association (“the Association”) shall be governed by a Board of Directors (“the Board”) appointed by the Director of Insurance (“the Director”) in accordance with Section 383.175, RSMo. Of the initial eight members of the Board, one from each of the three insurance industry trade groups and one unaffiliated member will serve for three years, and the remaining four members will serve for two years. The determination of which of the two trade group members from each of the three trade groups and which of the two unaffiliated members will serve for three years and which will serve for two years shall be determined by drawing lots at the Board’s organizational meeting or a subsequent meeting. Thereafter, each member shall serve for a term of three years, provided that members shall serve for their designated terms of years, until they are reappointed by the Director, or until their successor is appointed, whichever occurs first. Any member appointed to the board by the Director as a replacement for another member shall serve the unexpired term of the member he or she is replacing. Nothing shall prohibit successive terms by Board members.

**Section 2. Officers.** The Director of Insurance shall designate a Chair from among the members of the Board. The Chair shall be in charge of any meetings of the Board, shall have the authority to sign contracts approved by the Board on behalf of and in the name of the Association, and shall have such other powers and responsibilities as are specified in this Plan of Operation (the “Plan”). The Board shall elect: a Vice-Chair who shall, at the Chair’s request, function in the Chair’s absence; a Secretary who shall be responsible for the records of the Association, including the minutes of the Board and maintaining a record of all changes to the Plan; and, a Treasurer who shall be responsible for the accounts and finances of the Association. The Board may elect such other officers as it deems necessary. The Board-elected officers shall serve for one-year terms. The duties of any Board-elected officer may be delegated to a servicing company hired by the Board to administer some functions of the Association’s responsibilities.

### **Section 3. Meetings.**

1. The Board will meet as often as may be required to administer the Plan in accordance with Sections 383.150 to 383.195, RSMo. The Chair shall call meetings on such date, time and place as may be designated by the Chair. Meetings may be requested by any member of the Board, by the Director of Insurance or by any two or more insurance companies who are assessable by the JUA and who represent 20% or more of the net direct premiums of all assessable members.

2. Reasonable notice shall be given to all members of the Board prior to the meetings of the Board or any sub-committee thereof. “Reasonable” notice shall be considered to be two-week’s prior notice, except in emergency situations, for which twenty-four hour’s notice shall be provided. Notices shall state the purpose of the meeting and shall include any proposed changes in the Plan or any rules or manuals adopted under the Plan. No action shall be taken at a meeting for a purpose not stated in the meeting notice except by a majority vote of the entire membership of the Board. E-mail notice to a Board member’s business e-mail address shall be sufficient in this regard.

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3. The Association shall notify by e-mail the Department of Insurance and any interested individuals or organizations that have requested such notification in writing of any meeting of the Board. The Association shall maintain a list of the names and contact information for such individuals or organizations. The Board shall operate within the spirit of the state's open meetings and open records laws as set forth in Chapter 610, RSMo.

4. In addition to direct notice by e-mail to the Board members of meetings, the Association shall post notice of any meetings of its Board or any committees or subcommittees thereof on a public web site, along with information on the place, time and subject matter of such meetings. The web site shall also provide a copy of the Association's Plan of Operations, any manuals adopted under the Plan and such other information as deemed appropriate by the Board.

5. Until such time as the Board is able to establish its own web site, the web site of the Missouri Department of Insurance shall be used for the posting of the information required in subsection 4. above. The posting of a draft Plan of Operation on the Department's web site shall be the primary method by which the Department consults with the insured members of the Association, representatives of the public and affected individuals and organizations concerning the provisions of the Plan. The Department will pass along any comments it receives on the draft Plan to the members of the Board for their consideration.

### **Section 4. Attendance, Quorums, Proxies.**

1. A meeting of the Board may commence when a majority of the Board is present either in person or via telephone, provided however, that members who have waived their right to be present as provided under subsection 4 below shall not be counted for purposes of determining the existence of a quorum. An affirmative vote of a majority of the Board members present shall be required to approve any action, except that an affirmative vote of a majority of the full Board shall be required to:

- (1) Approve any contract with any servicing company;
- (2) Borrow or invest money;
- (3) Assess member insurers for a preliminary assessment;
- (4) Assess member insurers in the event of insufficient funds;
- (5) Prescribe a schedule of fees, classifications of risks and premium rates; or
- (6) Amend the Plan of Operation.

2. Voting by proxy shall not be allowed on matters relating to the Association. However, where a majority vote of the full Board is required, the voting may be held open for members not present at a meeting so long as the records of the Association show that the vote was held open, and who, when and how the subsequent votes were cast by the absent members, and that such delayed votes are subsequently attested to by the signatures of each Board member so voting by the Chair, Vice-Chair or Secretary of the Association. Any member may request any votes taken at an upcoming meeting be held open by means of an e-mail request to the Chairman prior to the meeting. Thereafter, the voting shall remain open for the period of time specified by the Chairman.

3. Attendance of members of the Board by telephone is permissible at any meeting of the Board or any committee thereof, provided that if the meeting is a public meeting, a speakerphone shall be used so that any members of the public who attend the

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meeting can hear the comments of the member or members who are participating via telephone.

4. A member of the Board who has received an e-mail notice of an upcoming Board meeting under subsection 2 of Section 3 of this Plan may waive his or her right to participate in said meeting, either in person or via telephone, by responding to the Chairman and to the other members of the Board in a follow-up e-mail stating he or she will not be able to attend and specifically waiving his or her right to be counted for purposes of establishing a quorum for the Board to take action at said meeting. Any member of the Board waiving participation in this manner shall nevertheless retain the right to vote on any matters voted on by the Board for which the vote was held open under subsection 2 of this Section.

5. Members shall recuse themselves from any votes in which they or their immediate family members have any direct or potential pecuniary interest.

**Section 5. Committees.** The Board may appoint such committees as it deems appropriate for its oversight of the operations of the Association, including but not limited to underwriting, actuarial, claims and finance committees, provided, however, that the Board shall specify in amendments to this Plan the extent of the authority and autonomy of any committee to act without the approval of a majority vote of the Board.

### **Section 6. Powers and Duties.**

1. The Board shall have the power on behalf of the Association to consider, establish, draft, or approve rules for:

(1) The management of the Association's financial affairs, bank accounts, financial controls including bank deposit and withdrawal authority, Association check drafting authority and premium collection and disbursement authority;

(2) The Association's accounting practices and procedures, preparation of annual financial statements, participation in the Department's annual audit, and whatever other provisions are appropriate to accomplish the full and accurate reporting of the financial affairs of the Association;

(3) The management and investment of the Association's assets and the monitoring of the performance of those investments;

(4) The underwriting standards to be used by the Association, including standards for the evaluation of applications for coverage, the processing of those applications, the content of the notification to the applicant of the Association's decision to accept or decline coverage, the extent to which underwriting is contingent on special coverage limits, practice limits, exclusions to coverage or other conditions, and the policy endorsements to be used in such situations. Such underwriting standards may address the types of health care providers to be covered by the Association, how the Association will expand the extent of that coverage to other provider types and how the Association will address requests that the Association review previous underwriting decisions;

(5) The premium rates and fee schedules to be charged by the Association for its coverage, whether a minimum premium shall be charged, and whether there will be special charges for solo practitioners, new practitioners, group practices, and professional corporations, and how the first-year surcharge required under Section 383.165, RSMo shall be administered;

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(6) The reporting, adjusting, defense of, reserving for, settlement of and payment of claims;

(7) The collecting and coding of premium information and claim information for purposes of developing the Association's premium rates and for reporting to the Department;

(8) The policy language for the policies of insurance to be issued by the Association; and,

(9) Any reinsurance provided by the Association to voluntary market carriers writing medical malpractice insurance for health care providers in this state, to the extent the Board determines such coverage is authorized by law.

2. The Board may delegate the responsibility for establishing the rules authorized under subsection 1 of this section to one or more third-party servicing company under written contracts approved by the Board.

3. The Board may procure such directors and officers insurance, fidelity and surety bonds and such other insurance as it deems necessary.

4. The Board may consider and act upon any other matters it deems to be necessary and appropriate for the proper administration of the Association.

5. The Board shall meet as often as is required to administer the Plan in accordance with Sections 383.150 to 383.195, RSMo.

6. Any rules adopted or approved by the Board under this section shall be considered incorporated by reference into this Plan of Operation upon the approval of the Director of Insurance. At a minimum, any rules so adopted shall be mentioned by cross-reference in the text of an amended Plan. To the extent the rules are incorporated into operational manuals of the Association, the manuals shall be filed with and approved by the Director.

**Section 7. Vacancy on the Board.** Prior to the end of the term of any Board member or in the event of a vacancy on the Board, the remaining Board members, either individually or acting as a board, may submit to the Director of Insurance for his consideration the names of qualified candidates to fill the vacancy on the Board. The Director shall review any such submissions and any other suggested candidates and will thereafter appoint a replacement, from the same insurance trade association as was represented by the departing member (if applicable).

**Section 8. Expenses of the Board.** The members of the Board shall be reimbursed out of the administrative funds of the association only for the actual and necessary expenses incurred in attending meetings of the Board, in accordance with Section 383.175, RSMo. The Board may set reasonable reimbursement ranges for such expenses, as well as the documentation thereof.

### **Section 9. Indemnification.**

1. The Association shall indemnify any member of the Board, any officer, claims adjuster, other employee of the Association who was or is a party or witness or is threatened to be made a party or witness to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the name of the Association) by reason of the fact that he or she is or was

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a person described in this provision, against expenses (including attorneys fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if such person acted within the scope of their membership or employment. Determination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, or its equivalent, shall not, of itself, create a presumption that the person's conduct was not within the scope of their membership or employment.

2. The indemnification and advancement of expenses provided pursuant to this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under statute or regulation.

3. The Association may maintain a Directors and Officers liability policy and any other coverage deemed appropriate by the Board in its best business judgment.

4. Any indemnification of the Board shall be deemed retroactive so as to cover any actions of the Board taken in connection with the Association that occurred prior to the formal adoption and approval of the Association's Plan of Operations, or any amendments thereto.

### **Section 10. Public Policies of JUA.**

1. In accordance with Section 383.155, RSMo, the Board shall see that the Association provides for the economic, fair and nondiscriminatory administration of the Association and the prompt and efficient distribution of medical malpractice insurance in Missouri. In distributing such insurance, the Association will provide health care providers with information via a web site and written materials on the coverages, rates, underwriting guidelines, loss control programs and such other information as is appropriate, but the Association will not encourage new business through advertising or otherwise actively compete with voluntary market carriers for policyholders.

2. The activities of the Board shall conform to the spirit of the state's open meetings and open records requirements.

3. The Association shall adopt an emergency plan to allow for the continued functioning of the Association in the event of a disaster. The emergency plan shall assure that the critical records of the Association are backed-up on a regular basis and that the back-up information is stored in a secure, alternate location selected for that purpose because it presents a different risk profile than the primary location. The emergency plan shall also provide for such transfers of authority or delegations of authority that might be necessary in the event key personnel are unavailable for their official or normal duties.

### **Section 11. Day-to-Day Management of the JUA.**

1. The Board shall arrange for the day-to-day operation and management of the insurance functions of the Association, including the rating and underwriting of policies, the issuance of policies, the handling of claims (including the receipt of, adjustment of, defense of, reserving for and payment of claims), the investment of funds, the procurement of reinsurance, and the keeping of accurate books and records of the Association, to be paid for from the funds of the Association derived from premiums for coverage or from assessments on member insurers.

2. The Board may select one or more servicing companies to perform any or all such functions, using whatever means the Board deems reasonable under the

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circumstances, from among the entities known by the Board to be successfully providing similar services elsewhere. The Board's decision to hire one or more servicing companies may include the hiring of an underwriting staff, a claims staff, a consulting actuary, an investment advisor, an auditor, legal counsel, a custodian bank, an information systems specialist, and a billing specialist.

3. In addition to the insurance functions of the Association, the Board will arrange that the staff be able to maintain current records for the insurer members of the association for purposes of any assessments.

4. Once the Board has arranged for the day-to-day operation of the Association, it shall see that the Association employees develop such administrative, underwriting, claims and statistical manuals as will allow for the fair and nondiscriminatory administration of insurance under the Plan.

### **Section 12. Assessments.**

1. All insurers authorized to write casualty insurance on a direct basis in Missouri under the provisions of Section 379.010.1(2) shall be member insurers of the association. The lines of casualty insurance to be assessed under Section 383.160, subsection 4, should an assessment be called for, shall be as follows:

- (1) Multi peril crop;
- (2) Farmowners multi peril;
- (3) Homeowners multi peril;
- (4) Commercial multi peril (liability portion);
- (5) Ocean marine;
- (6) Inland marine;
- (7) Financial guaranty;
- (8) Medical malpractice;
- (9) Workers' compensation;
- (10) Other liability;
- (11) Products liability;
- (12) Other private passenger auto liability;
- (13) Other commercial auto liability;
- (14) Aircraft (all perils)
- (15) Fidelity; and
- (16) Surety.

2. The Association will determine when and under what circumstances these member insurers shall be notified of the creation of the Association, their status as member insurers, that under Section 383.155, RSMo, membership is a condition of their continued authority to do business in Missouri, and whether they will be required to pay an assessment to fund the initial operations of the Association. The Association shall see that a list of its member insurers is maintained. The Department will provide the Association with information on any insurers who are newly authorized to write any of the lines deemed to be casualty insurance by the Board, as well as the withdrawals of any such insurers due to mergers, insolvency, withdrawal from the market, or similar changes. The Department shall also provide the Association with data on the net direct premiums written by the Association's member insurers at least annually.

3. The Board shall determine whether a preliminary assessment of the member

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insurers in order to cover the initial expenses of the Association related to its commencement of operations is necessary under Section 383.155, RSMo, or whether another option exists for covering such expenses. The Board will also determine whether any subsequent assessments are necessary because insufficient funds are available for the sound financial operation of the association under Section 383.160, RSMo.

4. The Board shall declare that such an assessment is necessary only upon a vote of a majority of the members of the Board. The Board shall then direct that the member insurers be assessed in proportion to the net direct premiums each member wrote in Missouri for each line of casualty insurance required to participate as compared to the total net direct Missouri premium for that line written by all insurers, based on the most previous calendar year's data obtained from the Department, subject to a cap of one percent (1%) of each member insurer's net direct premium for all said lines in any one calendar year. In any assessment notification to member insurers, the Association shall inform the member insurers that any amounts paid through the assessment shall be deducted from any past or future premium taxes due but not yet paid to the state of Missouri.

5. The Board shall also monitor any liability for payment to the general fund under subsection 6 of Section 383.160, RSMo.

### **Section 13. Coverage to be Provided by JUA / Underwriting.**

1. The Board shall approve an underwriting manual that provides reasonable and objective underwriting standards and for the prompt and efficient distribution of coverage, as well as any changes to that manual. As part of that approval, the Board will determine which categories of health care providers the Association will make coverage available for under Section 383.155, RSMo. The underwriting manual may also address whether insured providers will be required to adhere to limitations on their practices and to safety and loss control standards. The manual shall include the form of the application to be used by the Association and any supplemental materials that may be required to be submitted as part of any application. The manual may also discuss whether a provider is entitled in good faith to coverage by the Association, due to specific circumstances, such as the existence of an outstanding premium obligation to another insurer.

2. Coverage provided by the Association shall be in the form policies for medical malpractice insurance written so as to apply to injury which results from acts or omissions occurring during the policy period, filed with and approved by the Department, which shall specifically include acceptable cancellation provisions. Coverage shall be limited to one million dollars of coverage for one claimant under a single policy and three million dollars for all claimants under a single policy, in any one year. Coverage may include such incidental coverages as authorized by the Board. The Board shall determine whether there will be a minimum policy term.

3. The Board shall approve the premium rates and fees schedules to be charged by the Association for its coverage, which are in amounts that have been determined by a fellow or associate of the Casualty Actuarial Society with experience in medical malpractice rating to be actuarially sound and self-supporting. The Board may determine whether a minimum premium shall be charged, whether there will be special charges for solo practitioners, new practitioners, group practices, and professional corporations. The Board shall also determine how policyholders shall pay the special additional first-year

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charge required under Section 383.165, RSMo.

4. The Board shall determine whether providers will be permitted to make periodic payments of premium payments, and the conditions for such payments.

### **Section 14. Basic Underwriting Standards.**

1. A health care provider shall be eligible for coverage from the Association if the health care provider possesses the following characteristics at the time of application for coverage:

(1) Be duly licensed or registered as a health care provider under Missouri law and meet the definition of a "health care provider" set forth in Section 383.150, RSMo;

(2) Has a professional health care practice which is located in whole or in part within the state of Missouri;

(3) Is seeking professional liability or related coverages, through the Association, only for Missouri activities or premises;

(4) Provides proof of similar coverages for all professional activities rendered and premises situated in other states;

(5) Pays the premium or portion thereof required under the underwriting manual of the Association;

(6) Has no unpaid, uncontested premium due for prior insurance;

(7) Agrees to participate in any loss control steps or programs required by the Association; and,

(8) Conforms to any other reasonable underwriting guidelines in the underwriting manual.

2. Any provider possessing the characteristics required under subsection 1 of this section may apply to the Association for coverage through a producer authorized to place casualty insurance in Missouri, on an application form approved by the Board. In reviewing a completed application form, the Association may seek such other additional information as is reasonable to verify the information on the application or otherwise determine the applicant's loss history or exposure to claims.

3. The provider classifications, premium rates, fee schedules, any premium debits and credits, any practice limitations, and any loss control steps or programs applied to or required of a particular applicant shall conform to the underwriting standards set forth in the Association's underwriting manual, as approved by the Board.

**Section 15. Applications / Premium Payments.** Subject to its guidelines contained in its Underwriting manual, the Association shall accept applications from any producer authorized to place casualty insurance under subdivision 1(4) of Section 375.018, RSMo. The Board shall determine the rate of compensation for such producers.

**Section 16. Reinsurance.** The Board shall have the power to assume reinsurance from its member insurers and to cede reinsurance for the Association in accordance with Section 383.155, RSMo.

### **Section 17. Ratemaking Process.**

1. The Board shall require that the premium rates charged by the Association are actuarially sound and self-supporting, as determined by a fellow or associate of the



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Casualty Actuarial Society with experience in medical malpractice insurance. Such rates shall comply with the provisions of Section 379.420 to 379.510, RSMo, and shall give due consideration to past and present loss and expense experience in medical malpractice insurance of all insurers, trends in the frequency and severity of losses, the investment income of the association, and such other information as the Director may require.

2. The rates, rating plans, rating rules, rating classifications and rating territories used by the Association shall be approved by a majority of the Board and shall be incorporated into a rating manual of the Association. As part of the rating manual, the Board will determine whether and to what extent the Association shall use experience rating, the number of rating classifications to be used and the definitions of rating terms such as “minor surgery.”

3. The Association shall collect the same premium and loss data on its insureds as is required by the Department for other medical malpractice insurers authorized by the Department, in the format required by the Department.

**Section 18. Claims.** The Association shall be authorized to settle claims against an insured provider on behalf of the Association without the agreement of the provider, provided however, that if the Association settles without the provider’s agreement to the settlement or any terms thereof, this fact shall be documented in the files of the Association and shall be reported on any loss runs on said provider produced by the Association.

**Section 19. Contents of Annual Statement.** The Association shall provide an annual statement to the Director of Insurance of the Association’s transactions, condition, operations and affairs, in a format specified by the Director, as required under Section 383.180, RSMo..

**Section 20. Annual Examination.** The Association shall cooperate with and pay for all annual examinations and any other examinations conducted by the Director of Insurance into the affairs of the Association required under Section 383.185, RSMo.

### **Section 21. Appeals.**

1. Any applicant for insurance coverage, any person insured by the Association or their representatives, or any affected insurer or producer aggrieved with respect to any ruling, action, or decision of the Association, its staff, any committee thereof or any servicing companies hired by the Board, regarding matters within the discretion of such persons or entities under the relevant provisions of this Plan or the manuals of the JUA, or any other matters agreed to specifically by the Board after a formal vote, shall submit the grievance in writing to the Board for its review. The submission of the grievance to the Board shall be made within thirty (30) days following notice of such ruling, action or decision. The Board may limit its review to the written submission or, in its sole discretion, permit the grievant to present oral argument to the Board. The Board shall provide its decision on the appeal in writing within thirty (30) days of the submission of the grievance or within thirty (30) days of the oral argument, if permitted.

2. Only decisions of the Board on appeals may be appealed to the Director of Insurance, provided however, that the action of the Board declining coverage to a class of

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business or a member of a class of business upon a reasonable underwriting basis shall not be a decision that may be appealed to the Director. Any appeal that is permitted to be made to the Director shall be made in writing within thirty (30) days from the decision of the Board.

3. In accordance with Section 383.190, RSMo, any person aggrieved by any decision of the Director on any such appeal may, within ten (10) days after notice thereof, file a petition in the Circuit Court of Cole County for a review thereof.

### **Section 22. Amendments to the Plan of Operation.**

1. Amendments to this Plan of Operation may be made by the Board, subject to the approval of the Director of Insurance, or at the direction of the Director, in accordance with Section 383.155, subsection 7.

2. After each revision of the Plan of Operation, a new version of the Plan shall be placed on the JUA's web site and otherwise be made available for review by the public. Each new version shall bear on each page a header or footer stating the date on which the Director approved the version. The Secretary of the JUA shall keep a copy of all past versions of the Plan of Operation in the records of the JUA along with a coversheet for each version listing the changes made to the previous version of the Plan.

**Section 23. Termination of the JUA.** If the Director of Insurance holds a public hearing under Section 383.195, RSMo to determine whether to terminate the operation of the Association, the Board shall be prepared to provide testimony on its understanding of whether medical malpractice liability insurance is reasonably available to health care providers in the voluntary market in Missouri. Should the Board conclude coverage is reasonably available, it shall also be prepared to provide testimony on how to terminate the affairs of the JUA, including the servicing of any outstanding claims.